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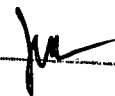
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FILED

2009 SEP 23 PM 2:26

CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY  DEPUTY

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

MICHELE STERRETT

Plaintiff,

v.

DEPARTMENT OF THE NAVY,
Defendant.

) CASE NO. **09 CV 2083 IEG**

)

) **COMPLAINT FOR DENIAL OF
RECORDS AND INFORMATION
IN VIOLATION OF THE PRIVACY
ACT AND THE FREEDOM OF
INFORMATION ACT**

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JURISDICTION

The jurisdiction of this Court is invoked pursuant to 5 USC § 552 [hereinafter "the Freedom of Information Act" or "FOIA"], and specifically § 552(a)(4)(B).

The jurisdiction of this Court is also invoked pursuant to 5 USC § 552a [hereinafter "the Privacy Act"], and specifically § 552a(g)(1).

The jurisdiction of this Court is also invoked pursuant to 28 USC § 1331. This is a civil action arising under laws of the United States; to wit, the Freedom of Information Act and the Privacy Act.

PARTIES

1. Michele Sterrett [hereinafter "Plaintiff"] resides in the County of San Diego, California; and she is employed with the Department of the Navy [hereinafter

1 “Defendant”] at Defendant’s Southwest Regional Maintenance Center [hereinafter
2 “SWRMC”] in the County of San Diego, California.

3 2. Defendant is an agency and military department of the United States of
4 America.

5 FIRST CAUSE OF ACTION [PRIVACY ACT]

6 3. In or about January 2009 the Inspector General for Defendant’s SWRMC
7 commenced an investigation of Plaintiff regarding certain alleged non-criminal,
8 employment-related, conduct. As a part of the investigation the Inspector General
9 interviewed Plaintiff, interviewed other persons, obtained affidavits, and obtained
10 documents [hereinafter collectively referred to as “investigation material”].

11 4. Based on the investigation material the Inspector General prepared an
12 Investigative Report which was completed in May 2009.

13 5. The Investigative Report, and the investigation material on which the Report is
14 based, are records within the definition of “record” in the Privacy Act and FOIA; and said
15 records are maintained by Defendant’s SWRMC within a system of records.

16 6. On August 21, 2009, the SWRMC issued Plaintiff a notice proposing the
17 termination of her employment. The notice, and reasons set forth therein, rely on the
18 Investigative Report and investigation material.

19 7. On August 27, 2009, Plaintiff requested from the SWRMC certain
20 investigation material; and by e-mail dated September 2, 2009, the SWRMC stated it
21 would comply with Plaintiff’s request. However, by e-mail dated September 16, 2009,
22 the SWRMC notified Plaintiff that it would not provide her the investigation material
23 requested; and the SWRMC has refused to provide said material to Plaintiff.

24 8. Under the Privacy Act the SWRMC was, and is, obligated to provide Plaintiff
25 the investigation material in response to her request; and the failure to do so violates the
26 Privacy Act. Because of said violation Plaintiff is entitled to an order of this Court
27 ordering Defendant to provide Plaintiff a copy of the requested investigation material.
28 Plaintiff is also entitled to an award of reasonable attorney fees and costs.

1 9. Pursuant to 5 CFR § 752.404(b)(1), Plaintiff is also entitled to the requested
 2 investigation material for use in responding to the proposal to terminate her employment.
 3 Accordingly, Plaintiff is entitled to an order of this Court enjoining Defendant from
 4 taking further action against Plaintiff, based on the proposal to terminate her or the
 5 investigation material, until Plaintiff has been given a copy of the investigation material
 6 and been granted a reasonable time thereafter to respond to the proposal.

7 10. All conditions precedent have been performed or have occurred.

8 SECOND CAUSE OF ACTION [FOIA]

9 11. Plaintiff refers to, and incorporates herein by said reference, each preceding
 10 paragraph in this Complaint.

11 12. On June 9, 2009, Plaintiff sent a written FOIA request to the SWRMC
 12 requesting a copy of the Investigative Report. In a letter dated June 17, 2009, the
 13 SWRMC acknowledged receipt of Plaintiff's "Freedom of Information Act (FOIA)
 14 request", and stated that the "investigative report ha[d] not been completed." The letter
 15 further stated that "[a]s soon as the investigative report is completed, we will mail you a
 16 copy pursuant to the provisions of the Privacy Act (PA)."

17 13. After making, and notifying Plaintiff of, its determination to comply with
 18 Plaintiff's FOIA request, Defendant's SWRMC has failed and refused to provide Plaintiff
 19 with an unaltered copy of the Investigative Report pursuant to that request.

20 14. The aforementioned failure and refusal violates FOIA; and because of said
 21 violation Plaintiff is entitled to an order of this Court ordering Defendant to provide
 22 Plaintiff an unaltered copy of the Investigative Report. Plaintiff is also entitled to an
 23 award of reasonable attorney fees and costs.

24 WHEREFORE, Plaintiff prays for judgment against Defendant as follows:

25 1. For an order of this Court,

26 (a) ordering Defendant to provide Plaintiff a copy of the Investigative
 27 Report,

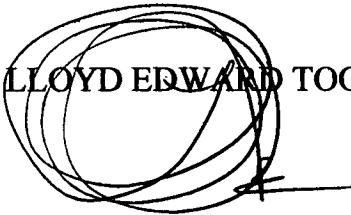
28 (b) ordering Defendant to provide Plaintiff a copy of the requested
 investigation material, and

1 (c) enjoining Defendant from taking any further action based on the
2 Investigative Report, investigation material, or proposal to terminate
3 Plaintiff's employment, until after she has been provided the
4 Investigative Report and investigation material, and been granted a
5 reasonable period of time thereafter to respond to the proposal;

6 2. For Plaintiff's costs of suit incurred herein, and reasonable attorney fees; and

7 3. For such other and further relief as this Court deems just and proper.

8 Dated: September 23, 2009.

9  LLOYD EDWARD TOOKS

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12 Attorney for Plaintiff
13 MICHELE STERRETT
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JS 44 (Rev. 12/07)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by the local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

MICHELE STERRETT

(b) County of Residence of First Listed Plaintiff San Diego
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Lloyd Edward Took, Esq. (619) 264-6895
P.O. Box 153096, San Diego, CA 92195-3096

DEFENDANTS

DEPARTMENT OF THE NAVY

County of Residence of First Listed Defendant San Diego
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

09 CV 2083 IEG

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II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State ☒ 1 ☐ 1
- Citizen of Another State ☐ 2 ☐ 2
- Citizen or Subject of a Foreign Country ☐ 3 ☐ 3
- Incorporated or Principal Place of Business In This State ☐ 1 ☐ 1
- Incorporated and Principal Place of Business In Another State ☐ 5 ☐ 5
- Foreign Nation ☐ 6 ☐ 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
☐ 110 Insurance ☐ 120 Marine ☐ 130 Miller Act ☐ 140 Negotiable Instrument ☐ 150 Recovery of Overpayment & Enforcement of Judgment ☐ 151 Medicare Act ☐ 152 Recovery of Defaulted Student Loans (Excl. Veterans) ☐ 153 Recovery of Overpayment of Veteran's Benefits ☐ 160 Stockholders' Suits ☐ 190 Other Contract ☐ 195 Contract Product Liability ☐ 196 Franchise	PERSONAL INJURY ☐ 310 Airplane ☐ 315 Airplane Product Liability ☐ 320 Assault, Libel & Slander ☐ 330 Federal Employers' Liability ☐ 340 Marine ☐ 345 Marine Product Liability ☐ 350 Motor Vehicle ☐ 355 Motor Vehicle Product Liability ☐ 360 Other Personal Injury	PERSONAL INJURY ☐ 362 Personal Injury - Med. Malpractice ☐ 365 Personal Injury - Product Liability ☐ 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY ☐ 370 Other Fraud ☐ 371 Truth in Lending ☐ 380 Other Personal Property Damage ☐ 385 Property Damage Product Liability	☐ 610 Agriculture ☐ 620 Other Food & Drug ☐ 625 Drug Related Seizure of Property 21 USC 881 ☐ 630 Liquor Laws ☐ 640 R.R. & Truck ☐ 650 Airline Regs. ☐ 660 Occupational Safety/Health ☐ 690 Other	☐ 422 Appeal 28 USC 158 ☐ 423 Withdrawal 28 USC 157 PROPERTY RIGHTS ☐ 820 Copyrights ☐ 830 Patent ☐ 840 Trademark
REAL PROPERTY ☐ 210 Land Condemnation ☐ 220 Foreclosure ☐ 230 Rent Lease & Ejectment ☐ 240 Torts to Land ☐ 245 Tort Product Liability ☐ 290 All Other Real Property	CIVIL RIGHTS ☐ 441 Voting ☐ 442 Employment ☐ 443 Housing/Accommodations ☐ 444 Welfare ☐ 445 Amer. w/Disabilities - Employment ☐ 446 Amer. w/Disabilities - Other ☐ 440 Other Civil Rights	PRISONER PETITIONS ☐ 510 Motions to Vacate Sentence ☐ 530 General ☐ 535 Death Penalty ☐ 540 Mandamus & Other ☐ 550 Civil Rights ☐ 555 Prison Condition	LABOR ☐ 710 Fair Labor Standards Act ☐ 720 Labor/Mgmt. Relations ☐ 730 Labor/Mgmt. Reporting & Disclosure Act ☐ 740 Railway Labor Act ☐ 790 Other Labor Litigation ☐ 791 Empl. Ret. Inc. Security Act IMMIGRATION ☐ 462 Naturalization Application ☐ 463 Habeas Corpus - Alien Detainee ☐ 465 Other Immigration Actions	☐ 400 State Reapportionment ☐ 410 Antitrust ☐ 430 Banks and Banking ☐ 450 Commerce ☐ 460 Deportation ☐ 470 Racketeer Influenced and Corrupt Organizations ☐ 480 Consumer Credit ☐ 490 Cable/Sat TV ☐ 810 Selective Service ☐ 850 Securities/Commodities/Exchange ☐ 875 Customer Challenge 12 USC 3410 ☒ 890 Other Statutory Actions ☐ 891 Agricultural Acts ☐ 892 Economic Stabilization Act ☐ 893 Environmental Matters ☐ 894 Energy Allocation Act ☐ 895 Freedom of Information Act ☐ 900 Appeal of Fee Determination Under Equal Access to Justice ☐ 950 Constitutionality of State Statutes

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

5 USC 552a AND 5 USC 552

Brief description of cause: PLAINTIFF SEEKS RELIEF FOR DEFENDANT'S VIOLATION OF PRIVACY ACT.

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SEPTEMBER 23, 2009

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

5525

AMOUNT

350

APPLYING IFP

JUDGE

MAG. JUDGE

9/23/09

Court Name: USDC California Southern
Division: 3
Receipt Number: CAS005525
Cashier ID: sramirez
Transaction Date: 09/23/2009
Payer Name: TOOKS ATTY AT LAW

CIVIL FILING FEE

For: STERRETT V. DEPT. OF THE NAVY
Case/Party: D-CAS-3-09-CV-002083-001
Amount: \$350.00

CHECK

Check/Money Order Num: 1474
Amt Tendered: \$350.00

Total Due: \$350.00
Total Tendered: \$350.00
Change Amt: \$0.00

There will be a fee of \$45.00
charged for any returned check.